

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RICHARD V. HAYES,
Plaintiff

vs

CAPTAIN BOST/BOSS,
Defendant

Case No. 1:05cv746

Spiegel, J.
Black, M.J.

ORDER

On November 18, 2005, the Court ordered plaintiff to submit a current certified copy of his trust fund account statement (or institutional equivalent) or pay the full filing fee of \$250 within thirty (30) days. (Doc. 3). On November 21, 2005, plaintiff submitted additional documentation in support of his complaint. (Doc. 4). On November 29, 2005, plaintiff moved to voluntarily dismiss this case, stating the issue upon which his complaint is premised has been resolved. (Doc. 5). Plaintiff also seeks waiver of the Court costs and fees associated with the filing of this action. *Id.*

Plaintiff's motion to dismiss is **GRANTED**. This matter is hereby dismissed without prejudice.

However, plaintiff's request for a waiver of fees and costs is **DENIED**. Plaintiff must still be assessed the \$250.00 filing fee for bringing this action. "[T]he Prison Litigation Act makes prisoners responsible for their filing fees the moment the civil action or appeal is filed." *McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997). "[T]he subsequent dismissal of the action, even if voluntary, does not negate that obligation." *In re Alea*, 286 F.3d 378, 381 (6th Cir.), *cert. denied*, 537 U.S. 895 (2002).

In accordance with section 804(a)(3) of the Prison Litigation Reform Act of 1995, 28

U.S.C. § 1915(b)(1), plaintiff must pay an initial partial filing fee of 20 percent of the greater of the average monthly deposits to his prison account or the average monthly balance in his account for the six month period immediately preceding the filing of the complaint. After payment of the initial partial filing fee, plaintiff is further required to make monthly payments of 20 percent of the preceding month's income credited to his prison account until he pays the full amount of the filing fee. 28 U.S.C. § 1915(b)(2).

Pursuant to 28 U.S.C. §1915(b)(1), the custodian of plaintiff's inmate trust fund account at the institution where he now resides is directed to calculate, as an initial partial payment, twenty percent (20%) of the greater of:

(a) the average monthly deposits to the inmate trust account; or

(b) the average monthly balance in the inmate trust account, for the six (6) months immediately preceding November 18, 2005. The custodian is ORDERED to complete and to submit to the Clerk of Court in Cincinnati, Ohio the attached form showing his calculation of the initial partial filing fee. The custodian is further ORDERED to forward from plaintiff's prison account to the Clerk of Court located in Cincinnati, Ohio the initial partial filing fee, as funds become available in plaintiff's account until the initial filing fee is paid. Even if the account is under ten dollars (\$10.00), the custodian must still forward payments to the Clerk of Court to pay the initial filing fee.

After full payment of the initial partial filing fee, the custodian shall forward to the Clerk of Court located in Cincinnati, Ohio monthly payments of twenty percent (20%) of plaintiff's preceding monthly income credited to his prison account, but only when the amount in the account exceeds ten dollars (\$10.00), until the full fee of two hundred and fifty dollars

(\$250.00) has been paid to the Clerk of the Court. 28 U.S.C. §1915(b)(2).

The Clerk of Court is **DIRECTED** to send a copy of this Order to the institutional cashier.

The prisoner's name and case number must be noted on each remittance.

Checks are to be made payable to: **Clerk, U.S. District Court.**

Checks are to be sent to:

**Prisoner Accounts Receivable
103 Potter Stewart United States Courthouse
100 East 5th Street
Cincinnati, Ohio 45202**

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that for the foregoing reasons an appeal of this Court's Order would not be taken in good faith. *See McGore*, 114 F.3d 601.

IT IS SO ORDERED.

Date: December 6, 2005

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge

CALCULATION OF INITIAL PARTIAL FILING FEE

Prisoner's name_____

Case no._____

Average Monthly Balance \$_____
(For six month period preceding filing of complaint or notice of appeal)

Average Monthly Deposits \$_____
(For six month period preceding filing of complaint or notice of appeal)

Initial Partial Filing Fee \$_____
(the greater of the average monthly deposits or the average monthly balance x .20)

Date

Signature of Authorized Officer